

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

GORDON FRANKLIN, JR.,)
Petitioner,)
v.) Civil Action
UNITED STATES OF AMERICA,) No. 06-3497-CV-S-RED-H
Respondent)

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE

Petitioner, an inmate confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus in which he appears to attempt to state a complaint against the Veteran's Administration. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner has erroneously filed his complaint as an action under 28 U.S.C. § 2241, it will be recommended that he be denied leave to proceed in forma pauperis.

Petitioner is presently housed at the United States Medical Center for Federal Prisoners. In his petition, he has not made any claims against his current custodian, the Warden at the Medical Center. Petitioner appears to attempt to bring a claim against the Veteran's Administration for denying him benefits. His petition, therefore, could be construed as a claim under the Federal Tort Claims Act ["FTCA"], 28 U.S.C. § 2675(a), which requires that he must exhaust administrative remedies under the FTCA. He does not allege that he has filed administrative claims regarding his allegations, and there is nothing to indicate that he has done so in this case. No other jurisdictional basis has been plead by petitioner. Accordingly, the complaint should be dismissed for failure to

exhaust administrative remedies.

Because petitioner has not exhausted available administrative remedies under the FTCA, and because petitioner has asserted no other basis for jurisdiction, it must be recommended that the complaint be dismissed without prejudice.

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 22 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis and that the petition herein for a writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND, Chief
United States Magistrate
Judge

Date: January 10, 2007